IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Application No.4324 pf 2004

Vijay B. Agarwal Applicant

Vs.

Pawan Mody & anr. Respondents

Mr.Uday Warunjikar with Mr.Niranjan Mundargi and S
Mr. Shreeram Shirsat for applicant.

Mr.D.T.Palekar for Resp.no.1.

Mr.D.P.Adsule, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 25, 2007.

P.C.

1. Heard Mr.Warunjikar with Mr.Mundargi, the learned counsel for the applicant. Mr.Palekar appears for the respondent no.1 and the learned APP appears for the State. The applicant had instituted Criminal Complaint No.423/S/2003 for an offence punishable under Section 500 of IPC against the Respondent No.1 in the Court of the Metropolitan Magistrate, 17th Court, Mazgaon, Mumbai and the said complaint has been dismissed and consequently the accused has been acquitted of the offence punishable under Section 500 of IPC as per the judgment and

order dated 29/4/2004. Hence this application for special leave to appeal under Section 378(4) of Cr.P.C.

2. The petitioner-complainant is a businessman and claims to come from a respectable family and he is also associated with number of constructive activities with reputed organisations. He had instituted two complaints against the accused and others for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. On the other hand accused had also lodged two complaints against the complainant in the Court of 37th Metropolitan Magistrate, Esplanade, Mumbai being CC No.469/S/95 and 470/S/95 for the offences punishable under Sections 467, 468, 471 read with Section 420 of IPC. In para 5 of the complaints instituted by the accused, there were some defamatory imputations made against the accused who is the present complainant and, therefore, he instituted C.C. No.423/S/2003 against the complainant in complaints filed against him.

3. After receipt of process as per the order dated 1/10/1999, the respondent no.1 appeared before

the trial Court and pleaded not guilty. The complainant examined himself on oath and did not examine any other witness though certain documents were placed on record in support of the averments in the complaint. The statement of the accused was recorded under Section 313 of Cr.P.C. and he did not lead any evidence.

4. In both the complaints filed against the present applicant i.e. C.C. Nos.562/S/1998 and 563/S/98 the complainant therein averred that "the accused is in the company of Anti Social elements". The issue of limitation which was raised by the respondent no.1 has been turned down. Both the complaints were lodged against the present applicant on 12th July 1994 and, therefore, the complaint filed by the present applicant could not be defeated only on the ground of limitations.

5. On merits, the learned Judge of the trial Court held that :

(a) there is not much difference between the aspersion that a person is himself an anti-social element and said person is in the

company of anti-social elements.

(b) By and large, the term "anti-social element" is used in a negative and derogatory sense. A human being is said to be a social animal and to term him anti-social is in a sense defamatory.

(c) Imputation against the applicant as stated in para no.5 of the complaints filed by the respondent no.1 was defamatory communication.

(d) It is not necessary that the evidence should show that the complainant has been injuriously affected by such alleged defamation.

. The learned Judge of the trial Court, however, did not agree with the complainant that the averments made in para 5 of the complaint against him would come within the ambit of Section 500 of IPC for punishing the accused. The contents of para 5 in the said two complaints filed by the present respondent no.1 read as under:

> "Now, the alleged original cheque is in the possession of the Accused. The seizure of the original cheque is very important and necessary for proving the case of the complainant. The accused is in the company of anti-social elements. The complainant therefore apprehends that the accused may destroy the original cheque when he comes to know the case of cheating and forgery is being filed against him in the Court. The Hon'ble Court may therefore issue the search warrant to the concerned police and direct the concerned police to take charge of the original cheque which is in the possession of the accused.

. The learned Judge of the trial Court gave the reasons in holding that the imputations so levied did not show any mens rea on the part of the respondent no.1 to defame and his intentions were mainly to ensure that the cheque which was in possession of the accused i.e. the present applicant was put in the custody of the Court. In para 40 of the impugned order the trial Court gave the following reasons and

in my opinion, rightly so:

> "40. If para No.5 of the complaint are considered in juxtaposition with the indictment in the said complaint (Exh. P-1 collectively), it seems that the complainant therein was desirous of seizure of original cheque, which was alleged to be in the possession of the accused therein. It was averred that the seizure of the original cheque is imperative for the proof of guilt of the accused therein. The complainant therefore also prayed for an issuance of search warrant to facilitate the seizure of original cheque from the possession of the accused therein. The complainant also raised apprehension that if the accused becomes aware of those complaints, the accused will destroy the original cheques, and thus in the context, it was affirmed that accused was in the company of anti-social elements."

The learned counsel for the applicant relied upon a decision of the Gujarat High Court in the case of Narottamdas L. Shah v. Maganbhai Revabhai Patel &

anr. **[1984 Cri.L.J. 1790]**.

6. I do not see any gross infirmity or perversity in the view taken by the learned Judge of the trial Court in acquitting the present respondent no.1 and, therefore, the reasoning set out in support of the order of acquittal does not call for any reconsideration.

7. Hence the application for leave to appeal is hereby rejected.

(B.H.MARL